

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1787** Session of  
2007

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INTRODUCED BY McILVAINE SMITH, QUINN, FREEMAN, STEIL, BRENNAN, CARROLL, COSTA, CURRY, EVERETT, FRANKEL, GIBBONS, GOODMAN, GRUCELA, HARPER, HORNAMAN, JAMES, JOSEPHS, KESSLER, KING, KORTZ, KOTIK, KULA, LEACH, LENTZ, MAHONEY, McGEEHAN, MELIO, MUNDY, M. O'BRIEN, O'NEILL, PASHINSKI, PAYTON, PETRI, ROEBUCK, RUBLEY, SCHRODER, SHIMKUS, K. SMITH, TANGRETTI, R. TAYLOR, THOMAS, VEREB, VITALI, WAGNER, WALKO, WATSON, GALLOWAY, MENSCH, SIPTROTH, MOYER AND CALTAGIRONE, AUGUST 1, 2007

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 11, 2007

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## AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,  
2 as amended, "An act to empower cities of the second class A,  
3 and third class, boroughs, incorporated towns, townships of  
4 the first and second classes including those within a county  
5 of the second class and counties of the second through eighth  
6 classes, individually or jointly, to plan their development  
7 and to govern the same by zoning, subdivision and land  
8 development ordinances, planned residential development and  
9 other ordinances, by official maps, by the reservation of  
10 certain land for future public purpose and by the acquisition  
11 of such land; to promote the conservation of energy through  
12 the use of planning practices and to promote the effective  
13 utilization of renewable energy sources; providing for the  
14 establishment of planning commissions, planning departments,  
15 planning committees and zoning hearing boards, authorizing  
16 them to charge fees, make inspections and hold public  
17 hearings; providing for mediation; providing for transferable  
18 development rights; providing for appropriations, appeals to  
19 courts and penalties for violations; and repealing acts and  
20 parts of acts," ~~further providing for municipal curative~~ ←  
21 ~~amendments; and~~ providing for procedure for municipal  
22 curative amendment subsequent to appellate court decision.

23 The General Assembly of the Commonwealth of Pennsylvania  
24 hereby enacts as follows:

1       ~~Section 1. Section 609.2 of the act of July 31, 1968~~  
2       ~~(P.L.805, No.247), known as the Pennsylvania Municipalities~~  
3       ~~Planning Code, reenacted and amended December 21, 1988~~  
4       ~~(P.L.1329, No.170), is amended to read:~~

5       ~~Section 609.2. Procedure for Municipal Curative~~  
6       ~~Amendments. If a municipality determines that its zoning~~  
7       ~~ordinance or any portion thereof is substantially invalid, it~~  
8       ~~shall take the following actions:~~

9             ~~(1) A municipality shall declare by formal action, its~~  
10          ~~zoning ordinance or portions thereof substantively invalid~~  
11          ~~and propose to prepare a curative amendment to overcome such~~  
12          ~~invalidity. Within 30 days following such declaration and~~  
13          ~~proposal the governing body of the municipality shall:~~

14               ~~(i) By resolution make specific findings setting~~  
15               ~~forth the declared invalidity of the zoning ordinance~~  
16               ~~which may include:~~

17                     ~~(A) references to specific uses which are either~~  
18                     ~~not permitted or not permitted in sufficient~~  
19                     ~~quantity;~~

20                     ~~(B) reference to a class of use or uses which~~  
21                     ~~require revision; or~~

22                     ~~(C) reference to the entire ordinance which~~  
23                     ~~requires revisions.~~

24               ~~(ii) Begin to prepare and consider a curative~~  
25               ~~amendment to the zoning ordinance to correct the declared~~  
26               ~~invalidity.~~

27             ~~(2) Within 180 days from the date of the declaration and~~  
28             ~~proposal, the municipality shall enact a curative amendment~~  
29             ~~to validate, or reaffirm the validity of, its zoning~~  
30             ~~ordinance pursuant to the provisions required by section 609~~

1 ~~in order to cure the declared invalidity of the zoning~~  
2 ~~ordinance.~~

3 ~~(3) Upon the initiation of the procedures, as set forth~~  
4 ~~in clause (1), the governing body shall not be required to~~  
5 ~~entertain or consider any landowner's curative amendment~~  
6 ~~filed under section 609.1 nor shall the zoning hearing board~~  
7 ~~be required to give a report requested under section 909.1 or~~  
8 ~~916.1 subsequent to the declaration and proposal based upon~~  
9 ~~the grounds identical to or substantially similar to those~~  
10 ~~specified in the resolution required by clause (1)(a). Upon~~  
11 ~~completion of the procedures as set forth in clauses (1) and~~  
12 ~~(2), no rights to a cure pursuant to the provisions of~~  
13 ~~sections 609.1 and 916.1 shall, from the date of the~~  
14 ~~declaration and proposal, accrue to any landowner on the~~  
15 ~~basis of the substantive invalidity of the unamended zoning~~  
16 ~~ordinance for which there has been a curative amendment~~  
17 ~~pursuant to this section.~~

18 ~~(4) A municipality having utilized the procedures as set~~  
19 ~~forth in clauses (1) and (2) may not again utilize said~~  
20 ~~procedure for a [36 month] 24 month period following the date~~  
21 ~~of the enactment of a curative amendment, or reaffirmation of~~  
22 ~~the validity of its zoning ordinance, pursuant to clause (2);~~  
23 ~~provided, however, if after the date of declaration and~~  
24 ~~proposal there is a substantially new duty or obligation~~  
25 ~~imposed upon the municipality by virtue of a change in~~  
26 ~~statute or by virtue of a Pennsylvania Appellate Court~~  
27 ~~decision, the municipality may utilize the provisions of this~~  
28 ~~section to prepare a curative amendment to its ordinance to~~  
29 ~~fulfill said duty or obligation.~~

30 ~~Section 2. The act is amended by adding a section to read:~~

1 SECTION 1. THE ACT OF JULY 31, 1968 (P.L.805, NO.247), KNOWN <—  
2 AS THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, REENACTED AND  
3 AMENDED DECEMBER 21, 1988 (P.L.1329, NO.170), IS AMENDED BY  
4 ADDING A SECTION TO READ:

5 Section 609.3. Procedure for Municipal Curative Amendment  
6 Subsequent to Appellate Court Decision.--If a Pennsylvania  
7 appellate court determines that a municipal zoning ordinance or  
8 any portion thereof is substantially invalid, the THAT <—  
9 municipality may take the following actions:

10 (1) A municipality shall declare by formal action its  
11 zoning ordinance or portions thereof may be substantially  
12 invalid and propose to prepare a curative amendment to  
13 overcome the invalidity identified in the appellate court  
14 decision. Within 30 days of the date that the appellate court  
15 decision is filed, the governing body of the municipality  
16 shall:

17 (i) By resolution make specific findings setting  
18 forth the declared invalidity of the ordinance.

19 (ii) Begin to prepare and consider a curative  
20 amendment to the zoning ordinance to correct the declared  
21 invalidity.

22 (2) Within ~~270~~ 210 days from the date that the decision <—  
23 of the appellate court is filed, the municipality shall enact  
24 a curative amendment to validate or reaffirm the validity of  
25 its zoning ordinance pursuant to the requirements of section  
26 609 to cure the declared invalidity of the zoning ordinance  
27 by the appellate court.

28 (3) When a municipality elects to follow the procedure  
29 set forth in clause (1):

30 (i) The governing body shall not be required to

1 entertain or consider any landowner's curative amendment,  
2 based on grounds identical to or substantially similar to  
3 those specified in the resolution required by clause  
4 (1)(i), filed under section 609.1, from the date that the  
5 decision of the appellate court is filed.

6 (ii) Similarly, the zoning hearing board shall not  
7 be required to make a determination under section 909.1  
8 or 916.1 based on grounds identical to or substantially  
9 similar to those specified in the resolution required by  
10 clause (1)(i), from the date that the decision of the  
11 appellate court is filed.

12 (iii) Upon completion of the procedures set forth in  
13 clauses (1) and (2), no right to a cure pursuant to the  
14 provisions of sections 609.1 and 916.1 shall, from the  
15 date that the decision of the appellate court is filed,  
16 accrue to any landowner on the basis of the substantive  
17 invalidity of the unamended zoning ordinance for which  
18 there has been a curative amendment pursuant to this  
19 section.

20 (4) A municipality having utilized the procedure as set  
21 forth in clause (1) may not again utilize the procedure.  
22 However, if there is a substantially new duty or obligation  
23 imposed upon the municipality by virtue of a Pennsylvania  
24 appellate court decision, the municipality may utilize the  
25 provisions of this section to prepare a curative amendment to  
26 its ordinance to fulfill the duty or obligation.

27 Section 3 2. This act shall take effect July 1, 2008, or  
28 immediately, whichever is later.

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